

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	
	)	
SOUTH OF THE BORDER, INC.,	)	Bankruptcy Case No. 98-32101
	)	
Debtor.	)	
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	)	
THE OFFICIAL PLAN COMMITTEE	)	
OF SOUTH OF THE BORDER, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adversary Case No. 00-3214
	)	
WORKING DISTRIBUTORS, INC.,	)	
	)	
Defendant.	)	

OPINION

This matter having come before the Court on a Complaint filed by Plaintiff on July 19, 2000, and an Answer of Working Distributors, Inc. filed on August 10, 2000; the Court, having reviewed Affidavits of the parties and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The parties have agreed that the facts in this matter are not at issue. Pursuant to a Motion to Submit Case on Affidavits, which was allowed on October 13, 2000, the Court will rule on the matter based upon the Affidavits submitted by the parties which were filed by the Plaintiff on October 20, 2000, and the Defendant on October 30, 2000.

The material facts are as follows:

1. On July 7, 1998, an involuntary case under Chapter 11 of the United States Bankruptcy Code was commenced against the Debtor Corporation, South of the Border, Inc.

2. The Debtor Corporation subsequently consented to the entry of an Order for Relief, and the Court entered its Order for Relief on August 21, 1998.

3. The Court has previously entered an Order confirming a plan of liquidation in the Debtor Corporation's Chapter 11 case.

4. Under the terms of the Chapter 11 liquidating plan, The Official Plan Committee of South of the Border, Inc. has the authority to commence and prosecute actions to avoid certain transfers made by the Debtor Corporation following the filing of the involuntary case under Chapter 11 on July 7, 1998.

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 11 U.S.C. §§ 544, 547, 549, and 550.

6. This is a "core" proceeding within the meaning of 28 U.S.C. § 157(b)(2).

7. On July 20, 1998, Debtor Corporation, South of the Border, Inc., issued a check payable to Defendant, Working Distributors, Inc., in the amount of \$2,500. It is undisputed that a true and correct copy of the check was attached as Exhibit A to the Affidavit of Tina Kohnz, filed with the Court on October 20, 2000.

8. It is undisputed that the check, in the amount of \$2,500, issued by South of the Border, Inc., was in payment of an amount due not from South of the Border, Inc., but from another entity known as "Branson Pasta, Inc."

9. The obligation paid by the \$2,500 check in question was incurred by Branson Pasta, Inc. by the purchase of alcoholic beverages for resale to retail customers of Branson Pasta, Inc. South of the

Border, Inc., which was the owner of 13 Taco Bell restaurants, was not engaged in the sale of alcoholic beverages, and it is clear that the debt in question, which was paid by the \$2,500 check, was not a debt of South of the Border, Inc.

10. The transfer of the \$2,500 check from South of the Border, Inc. to Defendant, Working Distributors, Inc., constitutes a transfer of the property of the Debtor's bankruptcy estate, and it is clear that the foregoing transfer was made following commencement of the Chapter 11 case.

11. The transfer of the \$2,500 check from South of the Border, Inc. to the Defendant, Working Distributors, Inc., was not authorized under any applicable provision of Title 11 of the United States Bankruptcy Code or by the Court.

Pursuant to 11 U.S.C. § 548:

(a)(1) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily -

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(B) (i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii) (I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; or

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

Under the uncontroverted facts in this case, the Court finds that the transfer in question can clearly be avoided in that the transfer was of an interest of the Debtor in property, namely cash; on the date of the transfer, the Debtor received nothing in equivalent value in exchange for the transfer of the case; and the Debtor was clearly insolvent at the time of the transfer, all pursuant to 11 U.S.C. § 548(a)(1)(B). Additionally, the Court can conclude and infer from the circumstances that the transfer in question was incurred with an actual intent to hinder, delay, or defraud creditors of the Debtor, in that there was absolutely no basis for the transfer of property from the Debtor's estate to an entity with which the Debtor Corporation had no relationship at all.

In addition to finding that the transfer in question can be avoided under 11 U.S.C. § 548, the Court finds that, as this transfer was a post-petition transaction, it can also be avoided under the provisions of 11 U.S.C. § 549, in that the transfer occurred after the commencement of the case and was not authorized under the Bankruptcy Code nor by the Court.

ENTERED: November 2, 2000.

/s/ GERALD D. FINES  
United States Bankruptcy Judge